

COCONINO COUNTY BOARD OF SUPERVISORS

ORDINANCE NO. 2003- 13

**COCONINO COUNTY SMOKEFREE AIR ORDINANCE
PROHIBITING SMOKING IN ALL ENCLOSED PUBLIC PLACES
WITHIN COCONINO COUNTY AND PROVIDING FOR ENFORCEMENT
AND PENALTIES FOR VIOLATIONS**

Sec. 1000. Title and Citation of Authority

This Ordinance shall be known as the Coconino County Smokefree Air Ordinance. The Coconino County Board of Supervisors and the Board of Health have the statutory authority to adopt county ordinances for preservation of public health under A.R.S. 36-184(3) and the authority to hold administrative hearings for violations of health regulations given in A.R.S. 36-183.04.

Sec. 1001. Findings and Intent

The Coconino County Board of Supervisors does hereby find that:

Numerous studies have found that tobacco smoke is a major contributor to indoor air pollution, and that breathing secondhand smoke (also known as environmental tobacco smoke) is a cause of disease in healthy nonsmokers, including heart disease, stroke, respiratory disease, and lung cancer. The National Cancer Institute determined in 1999 that secondhand smoke is responsible for the early deaths of up to 65,000 Americans annually. (National Cancer Institute (NCI), "Health effects of exposure to environmental tobacco smoke: the report of the California Environmental Protection Agency. Smoking and Tobacco Control Monograph 10," *Bethesda, MD: National Institutes of Health, National Cancer Institute (NCI)*, August 1999.)

The Public Health Service's National Toxicology Program has listed secondhand smoke as a known carcinogen. (Environmental Health Information Service (EHIS), "Environmental tobacco smoke: first listed in the Ninth Report on Carcinogens," *U.S. Department of Health and Human Services (DHHS), Public Health Service, National Toxicology Program*, 2000.)

Secondhand smoke is particularly hazardous to elderly people, individuals with cardiovascular disease, and individuals with impaired respiratory function, including asthmatics and those with obstructive airway disease. Children exposed to secondhand smoke have an increased risk of asthma, respiratory infections, sudden infant death syndrome, developmental abnormalities, and cancer. (California Environmental Protection Agency (Cal EPA), "Health effects of exposure to environmental tobacco smoke", *Tobacco Control* 6(4): 346-353, Winter, 1997.)

The Americans With Disabilities Act, which requires that disabled persons have access to public places and workplaces, deems impaired respiratory function to be a disability. (Daynard, R.A., "Environmental tobacco smoke and the Americans with Disabilities Act," *Nonsmokers' Voice* 15(1): 8-9.)

The U.S. Surgeon General has determined that the simple separation of smokers and nonsmokers within the same air space may reduce, but does not eliminate, the exposure of nonsmokers to secondhand smoke. (Department of Health and Human Services. *The Health Consequences of Involuntary Smoking: A Report of the Surgeon General*. Public Health Service, Centers for Disease Control, 1986.) The Environmental Protection Agency has determined that secondhand smoke cannot be reduced to safe levels in businesses by high rates of ventilation. Air cleaners, which are only capable of filtering the particulate matter and odors in smoke, do not eliminate the known toxins in secondhand smoke. (Environmental Protection Agency (EPA), "Indoor air facts no. 5: environmental tobacco smoke," *Washington, D.C.: Environmental Protection Agency (EPA)*, June 1989.)

A significant amount of secondhand smoke exposure occurs in the workplace. Employees who work in smoke-filled businesses suffer a 25-50% higher risk of heart attack and higher rates of death from cardiovascular disease and cancer, as well as increased acute respiratory disease and measurable decrease in lung function. (Pitsavos, C.; Panagiotakos, D.B.; Chrysoshoou, C.; Skoumas, J.; Tzioumis, K.; Stefanadis, C.; Toutouzas, P., "Association between exposure to environmental tobacco smoke and the development of acute coronary syndromes: the CARDIO2000 case-control study," *Tobacco Control* 11(3): 220-225, September 2002.)

Smoke-filled workplaces result in higher worker absenteeism due to respiratory disease, lower productivity, higher cleaning and maintenance costs, increased health insurance rates, and increased liability claims for diseases related to exposure to secondhand smoke. ("The high price of cigarette smoking," *Business & Health* 15(8), *Supplement A*: 6-9, August 1997.)

Numerous economic analyses examining restaurant and hotel receipts and controlling for economic variables have shown either no difference or a positive economic impact after enactment of laws requiring workplaces to be smokefree. Creation of smokefree workplaces is sound economic policy and provides the maximum level of employee health and safety. (Glantz, S.A. & Smith, L. The effect of ordinances requiring smokefree restaurants on restaurant sales in the United States. *American Journal of Public Health*, 87:1687-1693, 1997; Colman, R.; Urbonas, C.M., "The economic impact of smoke-free workplaces: an assessment for Nova Scotia, prepared for Tobacco Control Unit, Nova Scotia Department of Health," *GPI Atlantic*, September 2001.)

Smoking is a potential cause of fires; cigarette and cigar burns and ash stains on merchandise and fixtures causes economic damage to businesses. ("The high price of cigarette smoking," *Business & Health* 15(8), *Supplement A*: 6-9, August 1997.)

Accordingly, the Coconino County Board of Supervisors finds and declares that the purposes of this ordinance are (1) to protect the public health and welfare by prohibiting smoking in public places and places of employment; and (2) to provide the opportunity for all individuals to breathe smokefree air.

Sec. 1002. Definitions

The following words and phrases, whenever used in this Ordinance, shall be construed as defined in this Section:

1. "Accessory Bar" means a place within a restaurant or other business building for the service of alcoholic beverages and associated snacks for on-site consumption that shares common space (opening, entryway or interior space) and/or ventilation with the restaurant or other business.
2. "Business" means a sole proprietorship, partnership, joint venture, corporation, or other business entity formed for profit-making purposes, including retail establishments where goods or services are sold as well as professional corporations and other entities where legal, medical, dental, engineering, architectural, or other professional services are delivered.

3. "Employee" means a person who is employed by an employer in consideration for direct or indirect monetary wages or profit, and a person who volunteers his or her services for a non-profit entity.
4. "Employer" means a person, business, partnership, association, corporation, including a municipal corporation, trust, or non-profit entity that employs the services of one or more individual persons.
5. "Enclosed Area" means all space between a floor and ceiling that is enclosed on all sides by solid walls or windows (exclusive of doorways), which extend from the floor to the ceiling.
6. "Health Care Facility" means an office or institution providing care or treatment of diseases, whether physical, mental, or emotional, or other medical, physiological, or psychological conditions, including but not limited to, hospitals, rehabilitation hospitals or other clinics, including weight control clinics, nursing homes, homes for the aging or chronically ill, laboratories, and offices of surgeons, chiropractors, physical therapists, physicians, dentists, and all specialists within these professions. This definition shall include all waiting rooms, hallways, private rooms, semiprivate rooms, and wards within health care facilities.
7. "Opening" means an entrance, window or ventilation system.
8. "Place of Employment" means an area under the control of a public or private employer that employees normally frequent during the course of employment, including, but not limited to, work areas, employee lounges, restrooms, conference rooms, meeting rooms, classrooms, employee cafeterias, hallways, and vehicles. A private residence is not a "place of employment" unless it is used as a childcare, adult day care, or health care facility.
9. "Public Place" means an enclosed area to which the public is invited or in which the public is permitted, including but not limited to, banks, bars, educational facilities, health care facilities, laundromats, public transportation facilities, reception areas, restaurants, retail food production and marketing establishments, retail service establishments, retail stores, shopping malls, sports facilities, theaters, and waiting rooms. A private residence is not a "public place" unless it is used as a childcare, adult day care, or health care facility.
10. "Reasonable Distance" means a distance sufficient to ensure that persons entering or leaving the building shall not be subjected to breathing tobacco smoke.
11. "Restaurant" means an eating establishment, including but not limited to, coffee shops, cafeterias, sandwich stands, and private and public school cafeterias, which gives or offers for sale food to the public, guests, or employees, as well as kitchens and catering facilities in which food is prepared on the premises for serving elsewhere. The term "restaurant" shall include a bar area within the restaurant.
12. "Retail Tobacco Store" means a retail store utilized primarily for the sale of tobacco products and accessories and in which the sale of other products is merely incidental.

13. "Service Line" means an indoor or outdoor line in which one (1) or more persons are waiting for or receiving service of any kind, whether or not the service involves the exchange of money. "Service Lines" may include but are not limited to ATMs, bus stops and ticket purchase lines.
14. "Shopping Mall" means an enclosed public walkway or hall area that serves to connect retail or professional establishments.
15. "Smoking" or "To Smoke" means inhaling, exhaling, burning, or carrying any lighted cigar, cigarette, pipe, weed, plant, or other combustible substance in any manner or in any form.
16. "Sports Facilities" means sports pavilions, open and covered stadiums, gymnasiums, health spas, boxing arenas, swimming pools, roller and ice rinks, bowling alleys, and other similar places where members of the general public assemble to engage in physical exercise, participate in athletic competition, or witness sports or other events.
17. "Stand-alone Bar" means any place of business that is used to sell and serve alcoholic beverages and for which there is no food service; and that is not located within, and does not share any common entryway, opening or common indoor area with, and is separately ventilated from, any other enclosed indoor workplace.

Sec. 1003. Application of Ordinance to County-Owned Facilities

All enclosed facilities, including buildings and vehicles owned, leased, or operated by the County of Coconino, shall be subject to the provisions of this Ordinance.

Sec. 1004. Prohibition of Smoking in Public Places

Smoking shall be prohibited in all enclosed public places within Coconino County, including but not limited to, the following places:

1. Aquariums, galleries, libraries, and museums.
2. Areas available to and customarily used by the general public in businesses and non-profit entities patronized by the public, including but not limited to, professional offices, banks, laundromats, hotels, and motels.
3. Accessory bars.
4. Bingo facilities when a bingo game is in progress.
5. Convention facilities.
6. Elevators.

7. Facilities primarily used for exhibiting a motion picture, stage, drama, lecture, musical recital, or other similar performance.
8. Health care facilities.
9. Licensed child care and adult day care facilities.
10. Lobbies, hallways, and other common areas in apartment buildings, condominiums, trailer parks, retirement facilities, nursing homes, and other multiple-unit residential facilities.
11. Polling places.
12. Public transportation facilities, including buses and taxicabs, under the authority of Coconino County, and ticket, boarding, and waiting areas of public transit depots.
13. Restaurants.
14. Restrooms, lobbies, reception areas, hallways, and other common-use areas.
15. Retail stores.
16. Rooms, chambers, places of meeting or public assembly, including school buildings, under the control of an agency, board, commission, committee or council of the Coconino County or a political subdivision of the State when a public meeting is in progress, to the extent the place is subject to the jurisdiction of Coconino County.
17. Service lines.
18. Shopping malls.
19. Sports Facilities.

Sec. 1005. Prohibition of Smoking in Places of Employment

- A. Smoking shall be prohibited in all enclosed facilities within places of employment without exception. This includes common work areas, auditoriums, classrooms, conference and meeting rooms, private offices, elevators, hallways, medical facilities, cafeterias, employee lounges, stairs, restrooms, vehicles, and all other enclosed facilities.
- B. This prohibition on smoking shall be communicated to all existing employees by employers by the effective date of this Ordinance and to all prospective employees upon their application for employment.

Sec. 1006. Reasonable Distance

Smoking is prohibited within a reasonable distance outside an opening to an enclosed area where smoking is prohibited, so as to ensure that tobacco smoke does not enter the area through

entrances, windows, ventilation systems, or other means. Such reasonable distance shall be a distance sufficient to ensure that persons entering or leaving the building shall not be subjected to breathing tobacco smoke. All smoking receptacles shall be placed outside the no smoking area in order to discourage smoking in these areas.

Sec. 1007. Where Smoking Not Regulated

Notwithstanding any other provision of this Ordinance to the contrary, the following areas shall be exempt from the provisions of Sections 1004 and 1005:

1. Private residences, except when used as a licensed child care, adult day care, or health care facility.
2. Hotel and motel rooms that are rented to guests and are designated as smoking rooms; provided that not more than twenty percent (20%) of rooms rented to guests in a hotel or motel may be designated as smoking. Hotels and motels that have twenty-six (26) or fewer rooms that are rented to guests may designate a percentage of rooms as smoking and nonsmoking; however, once designated, a room cannot be reversed.
3. Outdoor areas of places of employment except those covered by the provisions of Section 1006.
4. Native American or other religious ceremony practice pursuant to the American Indian Religious Freedom Act of 1978, as amended.
5. Stand-alone bars.

Sec. 1008. Declaration of Establishment as Nonsmoking

Notwithstanding any other provision of this Ordinance, an owner, operator, manager, or other person in control of an establishment, facility, or outdoor area may declare that entire establishment, facility, or outdoor area as a nonsmoking place. Smoking shall be prohibited in any place in which a sign conforming to the requirements of Section 1009(A) is posted.

Sec. 1009. Posting of Signs

- A. "No Smoking" signs or the international "No Smoking" symbol (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it) shall be clearly and conspicuously posted in every public place and place of employment where smoking is prohibited by this Ordinance, by the owner, operator, manager, or other person in control of that place.
- B. Every public place and place of employment where smoking is prohibited by this Ordinance shall have posted at all primary public entrances a conspicuous sign clearly stating that smoking is prohibited.

- C. All ashtrays and other smoking paraphernalia shall be removed from any area where smoking is prohibited by this Ordinance by the owner, operator, manager, or other person having control of the area.

Sec. 1010. Nonretaliation

No person or employer shall discharge, refuse to hire, or in any manner retaliate against an employee, applicant for employment, or customer because that employee, applicant, or customer exercises any rights afforded by this Ordinance or reports or attempts to prosecute a violation of this Ordinance.

Sec. 1011. Enforcement

- A. This Ordinance shall be enforced by the Coconino County Department of Health Services or an authorized designee.
- B. Any citizen who desires to register a complaint under this Ordinance may initiate enforcement with the Coconino County Department of Health Services.
- C. The Health Department, or their designees, shall, while an establishment is undergoing otherwise mandated inspections, inspect for compliance with this Ordinance.
- D. An owner, manager, operator, or employee of an establishment regulated by this Ordinance shall inform persons violating this Ordinance of the appropriate provisions thereof.
- E. Nothing in this ordinance shall be deemed to prevent or prohibit any person aggrieved by a violation of this ordinance to bring whatever legal remedies are available under state law.
- F. In addition to the remedies provided by the provisions of this Section, the Coconino County Department of Health Services or any person aggrieved by the failure of the owner, operator, manager, or other person in control of a public place or a place of employment to comply with the provisions of this Ordinance may apply for injunctive relief to enforce those provisions in any court of competent jurisdiction.
- G. The director of the Coconino County Department of Health Services, or her/his designees (hereinafter referred to as "director"), may issue a notice of violation and demand for compliance by certified or registered mail or by hand delivery to the person violating this ordinance. The Sheriff's Department may also assist with delivery of the notice of violation and demand for compliance. The notice shall state with reasonable specificity the nature of the violation and the deadline for compliance and shall inform the violator that a hearing may be requested.
- H. Unless the violator either complies within the stated deadline or requests a hearing within fifteen (15) days after service of the notice of violation and demand for compliance, the director may issue a compliance order consistent with the terms of the notice of violation.

- I. The director may appoint a hearing officer to conduct a hearing pursuant to A.R.S. 36-183.04. Hearings shall be conducted in the same manner as hearings are conducted pursuant to A.R.S. 41-1061 et seq.. The hearing officer shall either issue or deny a compliance order and shall make a finding regarding a civil penalty as provided in section 1012 of this ordinance.
- J. A compliance order issued pursuant to this section is final and enforceable in superior court unless the violator files an appeal to the director within 15 days after receiving the compliance order.
- K. On appeal, the director may affirm, modify or vacate the hearing officer's decision. The director shall consider the factors prescribed in subsection 1011 (L) of this ordinance. The director's decision is enforceable as a judgment in superior court and is subject to appeal pursuant to A.R.S. title 12, chapter 7, ordinance 6.
- L. In determining the amount of a civil penalty under this section, the director and the hearing officer shall consider the following:
 - 1. The seriousness of the violation.
 - 2. As an aggravating factor only, any economic benefit that results from the violation.
 - 3. The history of that violation.
 - 4. The economic impact of the penalty on the violator.
 - 5. Any good faith efforts to comply with the applicable requirements.
 - 6. The duration of the violation as established by any credible evidence.
 - 7. Payment by the violator of penalties previously assessed for the same violation.
 - 8. Other factors affecting the public health and safety the director deems relevant.
- M. All penalties collected pursuant to this section shall be deposited in the general fund of the county.
- N. Nothing in this section shall prevent or prohibit the director from filing an action in superior court, through the county attorney, for a temporary restraining order, preliminary or permanent injunctive relief, or any other appropriate relief necessary to protect the public health or the environment, or to compel compliance with a compliance order, including the collection of civil penalties assessed under that order and/or the revocation or suspension of any permit or license issued to the person for the premises on which the violation occurred. The director may settle any action filed pursuant to this section by submitting a consent decree that is agreed to by the parties for approval by the superior court.

Sec. 1012. Violations and Penalties

- A. A person who smokes in an area where smoking is prohibited by the provisions of this Ordinance shall be guilty of an infraction, punishable by a fine not exceeding fifty dollars (\$50).

- B. A person who owns, manages, operates, or otherwise controls a public place or place of employment and who fails to comply with the provisions of this Ordinance shall be guilty of an infraction, punishable by:
1. A fine not exceeding one hundred dollars (\$100) for a first violation.
 2. A fine not exceeding two hundred dollars (\$200) for a second violation within one (1) year.
 3. A fine not exceeding five hundred dollars (\$500) for each additional violation within one (1) year.
- C. Each day on which a violation of this Ordinance occurs shall be considered a separate and distinct violation.

Sec. 1013. Public Education

The Coconino County Department of Health Services shall engage in a continuing program to explain and clarify the purposes and requirements of this Ordinance to citizens affected by it, and to guide owners, operators, and managers in their compliance with it. The program may include publication of a brochure for affected businesses and individuals explaining the provisions of this ordinance.

Sec. 1014. Governmental Agency Cooperation

The Coconino County Department of Health Services (or designee) shall annually request other governmental and educational agencies having facilities within Coconino County to establish local operating procedures in cooperation and compliance with this Ordinance. This includes urging all Federal, State, Coconino County, and School District agencies to update their existing smoking control regulations to be consistent with the current health findings regarding secondhand smoke.

Sec. 1015. Other Applicable Laws

This Ordinance shall not be interpreted or construed to permit smoking where it is otherwise restricted by other applicable laws.

Sec. 1016. Liberal Construction

This Ordinance shall be liberally construed so as to further its purposes.

Sec. 1017. Severability

If any provision, clause, sentence, or paragraph of this Ordinance or the application thereof to any person or circumstances shall be held invalid, that invalidity shall not affect the other provisions of this Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are declared to be severable.

Sec. 1018. Effective Date

This Ordinance shall be effective ninety (90) days from and after the date of its adoption (February 3, 2004).

PASSED AND ORDAINED this 4th day of November, 2003.

COCONINO COUNTY BOARD OF SUPERVISORS

Matthew G. Ryan, Chairman

ATTEST: Clerk of the Board

Deputy Clerk

APPROVED AS TO FORM:
Coconino County Attorney

By: Deputy County Attorney